

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC.,)	
)	
Plaintiff)	
)	
v.)	
)	C.A. No. 05-349 GMS
BAXTER INTERNATIONAL INC., et al.,)	
)	
Defendants)	
)	
)	
BAXTER HEALTHCARE CORP.,)	
)	
Counterclaimant)	
)	
v.)	
)	
TALECRIS BIOTHERAPEUTICS, INC.)	
and BAYER HEALTHCARE LLC,)	
)	
Counterdefendants)	
)	
)	

ORDER

WHEREAS, on June 1, 2005, the plaintiff, Talecris Biotherapeutics Inc., filed the above-captioned patent infringement action against Baxter International Inc., and Baxter Healthcare Corporation;

WHEREAS, on October 13, 2006, the parties submitted a Joint Claim Chart (D.I. 159);

WHEREAS, on October 27, 2006, the parties submitted opening claim construction briefs (D.I. 160, 162);

WHEREAS, upon review of the Chart and briefs, the court notes that defendants' make

indefiniteness arguments regarding several claim terms;

WHEREAS, the court further notes that defendants resort to extrinsic evidence for concepts contrary to what is disclosed in the specification;

WHEREAS, the court will not permit summary judgment arguments during the claim construction phase of the litigation; and

WHEREAS, the court will not permit the use of extrinsic evidence in a way inconsistent with the Federal Circuit's pronouncements in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) ("Nor is the court barred from considering any particular sources or required to analyze sources in any specific sequence, as long as those sources are not used to contradict claim meaning that is unambiguous in light of the intrinsic evidence.").

IT IS HEREBY ORDERED that:

1. The court will not entertain invalidity arguments during the *Markman* Claim Construction hearing.
2. The court will not entertain expert testimony, or any other extrinsic evidence that contradicts the intrinsic evidence.

Dated: December 13, 2006

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE